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C O N F I D E N T I A L STATE 124856

SIPDIS

E.O. 12958: DECL: 12/03/2019
TAGS: PHUM IS UNHRC UN KPAL
SUBJECT: ACTION REQUEST: DEMARCHE ON GOLDSTONE FOURTH
GENEVA CONVENTION CONFERENCE

REF: BERLIN 01474

Classified By: IO Assistant Secretary Esther Brimmer;
Reason: 1.4(B), (D)

¶11. (U) This is an action request. Please see paragraph 3.

¶12. (C) The November 5 UN General Assembly (UNGA) resolution on the Goldstone Report recommended that the Government of Switzerland convene a conference of the High Contracting Parties to the Geneva Conventions on "measures to enforce" the Fourth Geneva Convention in the Occupied Palestinian Territories and to "ensure its respect." We are concerned that a conference would be overly politicized and focus on an agenda that goes beyond typical Fourth Geneva Convention issues into use of specific armaments. It may be possible to influence the decision on whether or not to convene a conference -- or at least to influence its agenda, tone, and timing -- if we make a concerted effort.

END SUMMARY

¶13. (C) ACTION REQUEST: Post is requested to approach the Government of Switzerland to ask it to consider refraining from holding such a conference, drawing from points contained in paragraph 9.

GENERAL BACKGROUND

¶14. (SBU) On November 5, the UNGA adopted a resolution on the Goldstone Report by a vote of 114(CH)-18(U.S.)-44. The resolution was the latest in a series of UN actions on the Goldstone Report. Following the Palestinian Authority's October 2 request for deferral of UN Human Rights Council (HRC) consideration of the Report, the UN Security Council (UNSC) discussed the Report as a part of its regular monthly debate on the Middle East on October 14 with no action taken.

On October 15-16, the HRC convened a Special Session on the Report, which passed a resolution endorsing the findings of the Goldstone Report and forwarded the Report to the UNGA for consideration.

¶15. (SBU) UNGA resolution 64/10 on the Goldstone Report contained numerous elements that the United States was unable to support, including an endorsement of the HRC's session endorsing the Goldstone Report and a recommendation that Switzerland convene a Conference of High Contracting Parties (HCP) to the Fourth Geneva Convention.

¶16. (C) We have received conflicting reports on Switzerland's intentions to convene the conference, including its timing and agenda. On November 10, Swiss MFA Legal Adviser Paul Seger indicated privately that Switzerland feels obligated to convene a conference based on the request of the UNGA, which

represents a majority of the HCP. On November 19, however, the German MFA told us that it understands the Swiss do not plan to host a special conference and that Switzerland has advised EU President Sweden that it believes it cannot be compelled to do so (see REFTEL). Switzerland has not always heeded calls to convene in the past. Although Switzerland convened conferences on Israel in 1999 and 2001 as a result of UNGA resolutions, it did not heed a similar UNGA request in 2005. Both the 1999 and 2001 conferences adopted politicized resolutions affirming the application of the Fourth Geneva Convention to "Occupied Palestinian Territory, including East Jerusalem."

¶17. (C) On December 4, the Swiss Deputy Permanent Representative in Geneva met with Mission Geneva and indicated that Switzerland would be reaching out the week of December 7 to a small group of countries, including the United States, to ask for views on timing and outcome. He indicated that they would listen to all views but that they felt obliged to go ahead based on the language in the UNGA resolution. When asked about outcomes, he suggested a declaration affirming application of the Convention with one or two possible measures but did not provide any specifics.

¶18. (C) Australia, Israel, and the United States declined to attend the 1999 and 2001 conferences. The Israelis strongly oppose the current recommendation to convene the Conference of High Contracting Parties and have asked that the United States oppose as well. It may be possible to influence the agenda, timing, and even the decision to convene a conference, which would undoubtedly be overtly politicized and could further harm attempts to restart Israeli-Palestinian negotiations. The agenda may focus on the use of specific armaments, including white phosphorus, which, because the Fourth Convention does not address weapons of war, arguably relates only tenuously to implementation of the Convention and ventures further than prior conferences.

TALKING POINTS

¶19. (SBU) Begin talking points:

-- We urge Switzerland to consider refraining from convening a conference of the High Contracting Parties (HCP) to the Fourth Geneva Convention. We are concerned that a conference would be a highly politicized event that could damage the atmosphere for the re-launch of successful Israeli-Palestinian negotiations as soon as possible.

-- We share Switzerland's concern about humanitarian suffering and the need to follow up on alleged violations of international law associated with the Gaza Conflict. We feel that the proper way to address the allegations raised in the Goldstone Report is through thorough and credible domestic investigations. We have urged both Israel and the Palestinians to fully investigate allegations in the Goldstone report and ensure investigators' independence to pursue cases. Israel has the capacity and democratic institutions to do so.

-- As we noted in 1999 and 2001, there is no explicit provision in the Geneva Conventions that establishes a legal basis for convening a conference of HCP to focus specifically on a single conflict.

-- We are also concerned that a conference could focus on an agenda that goes beyond core Fourth Geneva Convention issues into matters such as the use of specific armaments, including white phosphorus. These issues go beyond the scope of the Fourth Geneva Convention.

¶10. REPORTING DEADLINE AND POINTS OF CONTACT: Post is requested to respond by Tuesday, December 8. Please direct any questions or concerns to IO/HR Cari Enav/Paul Kruchoski.
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